

REMARKS

Claims 1-20 originally filed in this application are subject to a restriction requirement in the February 20, 2007 action. In particular, the claims are alleged to recite three distinct inventions, i.e., Group I directed to an apparatus of an electret microphone, Group II directed to a method for assembling an electret microphone and Group III directed to a variable capacitor microphone.

The applicant has amended the title of this application for better consistency the claimed invention.

The applicants hereby elect, with traverse, the invention of Group I, claims 1-10. As a result of the restriction/species election, claims 1-10, remain pending in the application. Claims 11-20 are withdrawn from the application, without prejudice to refiling these claims.

The applicants' election is with traverse at least because the examiner's requirement for restriction as between the inventions of Group I and Group III is improper and does not comport with Office rules.

For restriction to be proper two requirements must be met: the claimed inventions must be patentably distinct and there must be serious burden on the examiner to examiner both inventions in the same application, regardless of the independent patentability of the two inventions. Importantly, by making the restriction the Office makes the admission that the inventions are patentability distinct such that disclosure of one invention in the art cannot defeat the patentability of the other claimed invention. If the restriction is maintained, the applicant will rely upon this admission.

The inventions of Group I and Group III are directed to microphones of the electret and capacitor types, respectively. As such, however, each includes a variable capacitor as this is the manner in which an electret microphone works. That is, an electret microphone also measures a changing capacitance as the result of a diaphragm moving relative to a fixed backplate. The requirement for restriction requires the Office to hold the invention of Group I patentable over the disclosure of a variable capacitor microphone, and

also requires the Office to hold the invention of Group III patentable over the disclosure of an electret microphone. Clearly this cannot be the intent of the examiner in making the restriction.

Additionally, a search for electret microphones must encompass a search of variable capacitor microphones, and vice versa. Failure to search variable capacitor microphone art in respect of a claim to electrets microphones would leave uncovered an large portion of art clearly relevant to electret microphones, and vice versa. Not only is no serious burden posed upon the examiner, by definition, the examiner is compelled to search art related to variable capacitor microphones. Thus, no serious burden is imposed on the examiner by examining the claims of Group I and Group III in a single application.

The applicant offers that the examiner perhaps has not correctly characterized the claimed invention. The subject matter for which a patent is sought relates to a body assembly that can be used for any microphone architecture (e.g., electret, capacitor, dynamic and the like.) Making a separate insulating ring member, a conductive ring member, and a second inner housing, as is required in typically known microphone architecture, is time-consuming, requires additional/complex manufacturing steps and is expensive. In a microphone according to the claimed invention of either claim 1 or claim 17, a single assembly incorporates these elements reducing the overall size of the microphone; fixing the backplate against movement during transportation and/or manufacturing; and improving electroacoustic performance.

Favorable consideration, partial withdrawal of the restriction requirement and allowance of the application is requested.

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Respectfully submitted,

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